

BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

BRIAN C. PARSONS

Physical Therapist License
No. PT 25351,

Respondent.

Case No. 1D 201069532

OAH No. 2012040771

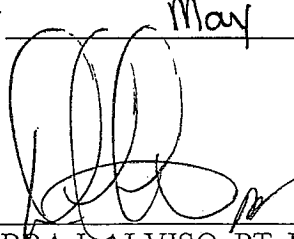
DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Physical Therapy Board of California as its Decision in the above-entitled matter, except that, pursuant to Government Code section 11517(c)(2)(C), the following errors are corrected as noted here:

1. On page 3, paragraph number 6, the citation to the California Code of Regulations is corrected to refer to title 16, rather than title 10;
2. On pages 7 and 8, paragraphs numbered 7, 5, 6, 7, 8, 9, 10, 11 and 8 are corrected to be renumbered paragraphs 8 through 16, respectively.
3. On page 7, new paragraph number 11 (former second paragraph number 7), fourth sentence, is corrected to read, "Respondent's wife confirmed there have been no subsequent similar incidents."; and
4. On page 9, condition 3 of the Order, second paragraph, a period is added to the end of the sentence.

This Decision shall become effective on June 20, 2013.

IT IS SO ORDERED this 21st day of May, 2013.



DEBRA J. ALVISO, PT, DPT, OCS
President
Physical Therapy Board of California

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PROPOSED DECISION

This matter was heard on February 11, 2013, by Erlinda G. Shrenger, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, in Los Angeles.

Michel W. Valentine, Deputy Attorney General, represented Complainant.

James L. Kellner, Attorney at Law, represented Brian C. Parsons, who was present.

Oral, documentary, and stipulated evidence was received, and argument was heard. The matter was submitted for decision on February 11, 2013.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant Rebecca Marco filed the Accusation in her official capacity as the Executive Officer of the Physical Therapy Board of California (Board). Respondent filed a Notice of Defense in which he requested a hearing to present his defense to the charges in the Accusation.¹

¹ A copy of Respondent's Notice of Defense was filed with OAH but was not included in the jurisdictional documents in Complainant's Exhibit 1. Official notice is taken of

2. On July 27, 2000, the Board issued physical therapist license number PT 25351 to Brian C. Parsons (Respondent). The license will expire on September 30, 2013, unless renewed.

Respondent's Conviction

3. At the hearing, Respondent stipulated that each allegation set forth in paragraphs 10, 11, 12, and 13 of the Accusation are true.

4. On December 29, 2010, in the Superior Court, County of Los Angeles, Southwest Judicial District, case number 0SY09611, Respondent was convicted on his plea of nolo contendere to one count of violating Penal Code section 243, subdivision (e)(1) (spousal battery), a misdemeanor. Imposition of sentence was suspended. Respondent was placed on summary probation for 36 months under terms and conditions including that he serve one day in county jail (less credit for one day), pay fines and assessments totaling \$570, perform eight hours of Cal Trans service, and complete a one-year domestic violence program.

5. The facts and circumstances of the conviction were established by Respondent's stipulation to paragraph 12 of the Accusation, which reads as follows:

On or about October 31, 2010, at 9:30 a.m., Redondo Beach Police Department (RBPD), were called by Respondent's wife, advising that her husband, [Respondent], hit her in the face at home. Redondo Beach Police officers responded to Fire Station #2, located nearby at 2400 Grant Avenue, in Redondo Beach, California, where Respondent's wife had walked to after he hit her. Respondent followed his wife to the fire station and was interviewed by police. Respondent stated the following: On October 31, 2010, at 9:15 a.m., he was having breakfast in the kitchen with his wife. Respondent made a comment about food, and his wife took it as a [sic] insult about her weight. Respondent and his wife then began to argue about her weight, and he became angry and grabbed his wife by both arms and pushed her back. Respondent then stated that he hit his wife on the left side of her ear with his right hand. Respondent's wife tried to make a phone call, Respondent took the phone away from her. The RBPD then inquired if the wife needed medical assistance for her injuries and she stated "no." The RBPD observed redness to the left side of the wife's face and ear along with redness around the throat area, consistent with being

Respondent's Notice of Defense in OAH's file. (Gov. Code, § 11515; Evid. Code, § 452, subd.(d).)

grabbed by the throat and struck in the face. Respondent was then placed under arrest for violation of Penal Code section 273.5(a).

Change of Address Notification

6. As a licensee of the Board, Respondent was required to notify the Board, in writing, of any change of address within 30 days of the change. (Cal. Code Regs., tit. 10, § 1398.6, subd. (a).) 16 *cs*

7. Respondent failed to timely notify the Board of a change in his address. Respondent's address changed in November 2008 when he moved from El Segundo to Redondo Beach. However, he did not notify the Board of this address change until January 19, 2011, which he did by email. At hearing, Respondent explained that he just forgot to notify the Board of his address change. He finally did so in January 2011, after a Board representative contacted him about his arrest and asked about his address. When he indicated his address had changed, she told him to change his address on-line, which he did.

Rehabilitation

8. Respondent is 38 years old. He and his wife, Stacey, are still married. They have two children.

9. Respondent is scheduled to remain on probation for his conviction until December 2013. He paid the court ordered fines of \$570, and completed the one-year domestic violence program.

10. Respondent attributes the October 2010 incident that resulted in his conviction to his anxiety, depression, and inability to cope with "several life changes" that were occurring over a short time. His wife was expecting their first child. He was selling his condominium and moving his family into a larger home. His wife had a car accident and had an emergency C-section. At his family's recommendation, he sought psychiatric help.

11. Respondent and his wife were separated for a short time after the incident, but reconciled within six to nine months of the incident. Respondent's wife, Stacey Parsons, testified at the hearing on behalf of her husband. Respondent and Mrs. Parsons have been married for six and one-half years. Mrs. Parsons testified credibly that she and Respondent have resolved their issues and they are "permanently reconciled" (her words). There have been no subsequent incidents. She and Respondent have been attending weekly counseling sessions with Steven Clark, Ph.D., MSW, LCSW, since their reconciliation. They intend to continue counseling with Dr. Clark in the future. In a letter dated January 22, 2013, Dr. Clark wrote, in part, that Respondent and his wife "have been diligent in their attendance to weekly sessions. They have been active in their mutual efforts to improve communication patterns and to develop more effective problem solving strategies. [¶] During the course of their treatment, they have been able to grow individually and as a family. Of significance, is

their increased capacity for empathy for one another. Their confidence in their progress is evidenced by their decision to have a second child." Their second child was born last July.

12. Respondent has been receiving treatment for general anxiety and depression from Fritz Hershey, Psy.D., of Associated Counselors & Therapists in Redondo Beach. Dr. Hershey is aware of the circumstances of Respondent's conviction. In an undated letter, Dr. Hershey wrote of Respondent's "ongoing progress" as follows:

[Respondent] has completed a course of therapy to address a condition of generalized anxiety. This condition has resolved, though occasionally with elevated stress, it is possible to experience low grade anxious and depressive features. These are not significant and are of no clinical concern. [Respondent] has never shown any signs of true relapse to any significant degree, despite the everyday challenges, normal to any individual's life. His core intent and dedication to wellness is found on his foundational and strong personally held value of his family of wife (Stacey) and son (Jackson). He continues to pursue an elective, low frequency course of "Growth Therapy". This enlightened approach to mental health would be best adopted by the general public, much as one seeks regular physical and dental checkups. His forward thinking and proactivity in this is to be lauded. It can certainly be a stabilizing factor in normal human life transitions. He and his wife are planning to add to their family, and he has recently accepted a new post of significant promotion (Supervising Physical Therapist) and responsibility at the clinic (Beach Cities Orthopedic) that he has worked at since November, 2011.

13. Respondent also submitted a letter dated February 4, 2013, by Sara Harper, D.O., who is Respondent's psychiatrist. Dr. Harper meets with Respondent every three months to monitor his progress and medications. Respondent currently takes Zoloft daily. In her letter, Dr. Harper wrote, in part: "[Respondent] has been under my care for his depression and anxiety disorder since 3/8/12. . . . He has followed all treatment recommendations and taken medications as prescribed with excellent treatment response. He is under my care still, last appointment 2/4/13."

14. Respondent's medication helps him deal with disagreements that come up in life. In addition, he has learned to take a time-out, remove himself from the argument, and take deep breaths and relax. Marriage counseling has also taught him to put things in perspective and to communicate in a productive manner.

15. Respondent currently works at Beach Cities Orthopedic in Manhattan Beach, where he has worked since November 2011. He disclosed his conviction on the employment application and told the human resources person. Before Beach Cities, Respondent worked

at Ho Physical Therapy in Beverly Hills but left that employment due to "practical differences" with his boss about her billing practices. He told his boss about his arrest at the time it happened. He did not leave Ho Physical Therapy because of the October 2010 incident. He left to work at Beach Cities which is closer to his home.

16. Respondent testified that none of his physical therapy patients suffered due to his depression. He was able to compartmentalize his home life and work because of his years of experience as a physical therapist. Respondent intends to continue his therapy and medications, which he finds beneficial. Overall, Respondent was credible in his testimony, both in terms of his demeanor, which was open and straightforward, and in terms of the consistency of his statements.

Cost Recovery

17. The declaration of Deputy Attorney General Michel W. Valentine has attached to it a Cost of Suit Summary, which he certifies as being true and correct. Therefore, Complainant has established that the reasonable cost of prosecution of this case is \$4,250. No evidence was presented that the Board incurred any investigative costs.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2660 provides, in pertinent part:

The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

[¶] . . . [¶]

(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a physical therapist or physical therapist assistant. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.

2. Business and Professions Code section 2661 provides, in part, that "a conviction following a plea of nolo contendere made to a charge of a felony or of any offense which substantially relates to the qualifications, functions, or duties of physical therapist is deemed to be a conviction within the meaning of this article."

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First Cause for Discipline

3. Cause exists to suspend or revoke Respondent's physical therapist license, pursuant to Business and Professions Code sections 2660, subdivision (d), and 2661, for unprofessional conduct, in that Respondent was convicted of a crime that substantially relates to the qualifications, functions, and duties of a physical therapist, based on Factual Findings 3-5 and Legal Conclusion 4.

4. Respondent's conviction was for spousal battery, in violation of Penal Code section 243, subdivision (e)(1). This crime is substantially related to the qualifications, functions, and duties of a Board licensee because, to a substantial degree, it evidences a present or potential unfitness of Respondent to perform the functions authorized by his physical therapist license in a manner consistent with the public health, safety or welfare. (Cal. Code Regs., tit. 16, § 1399.20.)

Second Cause for Discipline

5. The Second Cause for Discipline is duplicative of the First Cause for Discipline. Both causes seek discipline against Respondent's license under Business and Professions Code section 2660, subdivision (d), and are based on the same conduct by Respondent. Therefore, the Second Cause for Discipline does not establish a separate basis to discipline Respondent's license.

Third Cause for Discipline

6. It was established that Respondent failed to notify the Board of a change of his address within 30 days of the change, in violation of California Code of Regulations, title 16, section 1398.6, subdivision (a), based on Factual Findings 6 and 7.

7. However, cause does not exist to discipline Respondent's physical therapist license, by suspension or revocation, pursuant to California Code of Regulations, title 16, section 1398.6, subdivision (a), because that regulation contains no provision which specifies the discipline or sanction for an untimely address change notification. Regulation section 1398.6 reads, in its entirety, as follows:

(a) Each licensee shall report to the board each and every change of residence address within 30 days after each change, giving both the old and new address. In addition to the address of residence, a licensee may provide the board with an alternate address of record. If an alternate address is the licensee's address of record, he or she may request that the residence address not be disclosed to the public.

(b) Each licensee shall report to the board each and every change of name within 30 days after each change, giving both the old and new names.

(c) For purposes of this section, "licensee" includes any holder of an active, delinquent, suspended or expired license, approval, certification or other authorization issued by the Board to practice physical therapy or electromyography which is not canceled or revoked.

~~8~~ 8. The Accusation cites no other statutory authority to establish the Third Cause for Discipline. Therefore, the Third Cause for Discipline does not establish a basis for suspending or revoking Respondent's physical therapist license.²

Disposition

~~9~~ 9. Administrative proceedings to revoke, suspend or impose discipline on a professional license are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786.)

~~10~~ 10. The Board has developed criteria for evaluating the rehabilitation of a licensee whose license is subject to suspension or revocation due to conviction of a crime. (Cal. Code Regs., tit. 16, § 1399.22.) The criteria are: (a) the nature and severity of the act(s) or offense(s); (b) the total criminal record; (c) the time that has elapsed since commission of the act(s) or offense(s); (d) whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person; (e) if applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code; and (f) evidence, if any, of rehabilitation submitted by the licensee.

~~11~~ 11. Applying the Board's rehabilitation criteria, Respondent was convicted of spousal battery, which is a serious crime but the severity is mitigated by the fact he was charged and convicted of a misdemeanor offense. (Cal. Code Regs., tit. 16, § 1399.22, subd. (a).) The October 2010 incident occurred two and one-half years ago and appears to be an isolated incident. No evidence was presented of Respondent having any prior or subsequent arrests or convictions. Respondent's wife confirmed there have been ~~on~~ ^{no} subsequent similar ~~ex~~

² Although not cited in the Accusation as a statutory basis for discipline, it is noted that Business and Professions Code section 136 provides that the failure to notify a licensing agency of an address change within 30 days of the change constitutes grounds for issuance of a citation and administrative fine, if the licensing agency has authority to issue citations. However, section 136 provides no statutory basis for revoking or suspending a license, which is the discipline sought in the Accusation.

incidents. (Cal. Code Regs., tit. 16, § 1399.22, subds. (b), (c).) Respondent has complied with the terms of his criminal probation, and he is scheduled to remain on probation until December 2013. (Cal. Code Regs., tit. 16, § 1399.22, subd. (d).)

12 8. Most importantly, Respondent has demonstrated significant efforts to rehabilitate himself from his conviction. He and his wife are still married and their second child was born last July. Respondent and his wife have resolved their issues and are permanently reconciled, according to Mrs. Parsons. They have been attending marriage counseling with Dr. Clark, who has found that they have grown individually and as a family, improved their communication patterns, and increased their empathy for one another. Respondent is also addressing his depression and anxiety through on-going counseling and medication, which he finds beneficial. He has followed all treatment recommendations of his counselor and psychiatrist, and intends to continue doing so. Respondent appears motivated by his wife and children to keep his life on the right track.

13 9. Respondent has been licensed by the Board since 2010. No evidence was presented of any prior complaints or incidents regarding any of Respondent's physical therapy patients.

14 10. The Board has developed Model Guidelines for Issuing Citations and Imposing Discipline (Guidelines), which is incorporated by reference in its regulations. (Cal. Code Regs., tit. 16, 1399.15.) The Guidelines-4th edition are dated August 2012. The Guidelines-3rd edition are dated June 2009, and were the guidelines in effect at the time the Accusation was filed in January 2012. Under either edition of the Guidelines, the recommended discipline for conviction of a crime under Business and Professions Code section 2660, subdivision (d), is public reproof (minimum) or revocation (maximum). (Guidelines-3rd edition, pp. 12-13, 27; Guidelines-4th ed., pp. 18, 38.)

15 11. Considering the totality of the evidence, the revocation of Respondent's license is warranted, but Respondent has established sufficient rehabilitation to warrant staying revocation and imposing appropriate terms and conditions of probation for a period of three years. Respondent cannot, at this time, establish complete rehabilitation because he is still on probation for his conviction and will remain so until December 2013. The standard terms and conditions set forth in the Order below will ensure public protection. Said terms and conditions are based on the Guidelines-4th edition, pp. 53-58. The term for License Suspension has been omitted because it is not deemed necessary in Respondent's case and would merely be punitive.

Cost Recovery

16 8. Under Business and Professions Code section 2661.5, Complainant is entitled to recover reasonable costs of prosecution in this matter, as set forth in Factual Finding 17. However, a reduction in the costs is warranted because discipline against Respondent's license was established under the First Cause for Discipline only. The Accusation, in essence, contained two causes for discipline, since the First and Second Causes were

duplicates of each other. No discipline was established under the Third Cause. Since only one of two causes for discipline were established, the Board's cost recovery should be reduced by one-half. Therefore, Respondent shall pay \$2,125 to the Board for its costs of prosecution in this matter.

ORDER

Physical Therapist License No. PT 25351 issued to Respondent, Brian C. Parsons, is revoked; provided, however, that the order of revocation is immediately stayed and Physical Therapist License No. PT 25351 shall be placed on probation for a period of three years on the following terms and conditions of probation.

1. License Revocation, Stayed

Respondent's license shall be revoked, with the revocation stayed.

2. Cost Recovery

Respondent is ordered to reimburse the Board the actual and reasonable investigative and prosecutorial costs incurred by the Board in the amount of \$2,125. Said costs shall be reduced, however, and the remainder forgiven, if Respondent pays 50% of said costs, or \$1,062.50, within thirty (30) days of the effective date of this Decision and Order. In the event Respondent fails to pay within thirty (30) days of the Decision, the full amount of costs shall be immediately due and payable. Failure to pay the ordered reimbursement, or any agreed upon payment, constitutes a violation of the probation order. If Respondent is in default of his responsibility to reimburse the Board, the Board will collect cost recovery from the Franchise Tax Board, the Internal Revenue Service or by any other means of attachment of earned wages legally available to the Board.

3. Obey All Laws

Respondent shall obey all federal, state and local laws, the statutes and regulations governing the practice of physical therapy and remain in full compliance with any court ordered criminal probation. This condition applies to any jurisdiction with authority over Respondent, whether it is inside or outside of California.

Further, Respondent shall, within five (5) days of any arrest, submit to the Board in writing a full and detailed account of such arrest.

4. Compliance with Orders of a Court

Respondent shall be in compliance with any valid order of a court. Being found in contempt of any court order is a violation of probation.

5. Compliance with Criminal Probation and Payment of Restitution

Respondent shall not violate any terms or conditions of criminal probation and shall be in compliance with any restitution ordered, payments, or other orders.

6. Quarterly Reports

Respondent shall submit quarterly reports under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all conditions of probation.

7. Probation Monitoring Program Compliance

Respondent shall comply with the Board's probation monitoring program.

8. Interview with the Board or its Designee

Respondent shall appear in person for interviews with the Board, or its designee, upon request at various intervals.

9. Notification of Probationer Status to Employers

Respondent shall notify all present and future employers of the reason for and the terms and conditions of the probation.

Prior to engaging in the practice of physical therapy, Respondent shall provide a true copy of the Initial Probationary License Decision and Order, Statement of Issues or Accusation, Decision and Order, or Stipulated Decision and Order as appropriate to his employer, supervisor, or contractor, or prospective employer or contractor, and at any other facility where Respondent engages in the practice of physical therapy before accepting or continuing employment.

Respondent shall provide the probation monitor the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors, or contractors, and shall inform the probation monitor in writing of the facility or facilities at which Respondent will be engaging in the practice of physical therapy for purposes of allowing the probation monitor to communicate with the employer, supervisor, or contractor regarding Respondent's work status, performance and monitoring.

The information will be provided in writing to the probation monitor within ten (10) calendar days and will include written employer confirmation of receipt.

10. Notification of Change of Name or Address

Respondent shall notify the Board, in writing, of any and all name and/or address changes within ten (10) days of the change.

11. Restriction of Practice - Temporary Services Agencies

Respondent shall not work for a temporary services agency or registry.

12. Restriction of Practice - Clinical Instructor of Physical Therapy Student Interns or Foreign Educated Physical Therapist License Applicants Prohibited

Respondent shall not supervise any physical therapy student interns, foreign educated physical therapist license applicants or other individuals accumulating hours or experience in a learning capacity in physical therapy during the entire period of probation. Respondent shall terminate any such supervisory relationship in existence on the effective date of the Decision and Order.

13. Prohibited Use of Aliases

Respondent shall not use aliases and shall be prohibited from using any name which is not his legally-recognized name or based upon a legal change of name.

14. Intermittent Work

If Respondent works less than 192 hours as a physical therapist or a physical therapist assistant in the physical therapy profession in a period of three (3) consecutive months, those months shall not be counted toward satisfaction of the probationary period. Respondent is required to immediately notify the probation monitor or his or her designee if he or she works less than 192 hours in a three-month period.

15. Tolling of Probation

The period of probation shall run only during the time Respondent is practicing or performing physical therapy within California. If, during probation, Respondent does not practice or perform within California, Respondent is required to immediately notify the probation monitor in writing of the date that Respondent is practicing or performing physical therapy out of state, and the date of return, if any. Practicing or performing physical therapy by Respondent in California prior to notification to the Board of Respondent's return will not be credited toward completion of probation. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled.

16. Violation of Probation

Failure to fully comply with any component of any of the probationary terms and conditions is a violation of probation.

If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against

Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

17. Request to Surrender License Due to Retirement, Health or Other Reasons

Following the effective date of the Decision and Order, if Respondent ceases practicing or performing physical therapy due to retirement, health or other reasons or is otherwise unable to satisfy the terms and conditions of probation Respondent may request to surrender his license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, the terms and conditions of probation shall be tolled until such time as (1) the license is no longer renewable; (2) Respondent makes application for the renewal of the tendered license; or (3) Respondent makes application for a new license.

18. Completion of Probation

Respondent shall comply with all financial obligations required by this Order (e.g., cost recovery, restitution, probation costs) not later than 180 calendar days prior to completion of probation unless otherwise specified in the Order. Upon successful completion of probation, Respondent's license shall be fully restored.

19. California Law Examination - Written Exam on the Laws and Regulations Governing the Practice or Performance of Physical Therapy

Within ninety (90) days of the effective date of this Decision and Order, Respondent shall take and pass the Board's written examination on the laws and regulations governing the practice of physical therapy in California. If Respondent fails to pass the examination, Respondent shall be suspended from the practice of physical therapy until a repeat examination has been successfully passed. Respondent shall pay the costs of all examinations.

20. Practice or Performance of Physical Therapy While on Probation

It is not contrary to the public interest for Respondent to practice and/or perform physical therapy under the probationary conditions specified in the disciplinary order. Accordingly, it is not the intent of the Board that this Order, the fact that Respondent has been disciplined, or Respondent is on probation, shall be used as the sole basis for any third party payor to remove Respondent from any list of approved providers.

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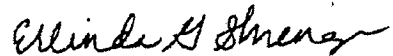
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21. Probation Monitoring Costs

Respondent shall reimburse all costs incurred by the Board for probation monitoring during the entire period of probation. Respondent will be billed at least quarterly. Such costs shall be made payable to the Physical Therapy Board of California and sent directly to the Physical Therapy Board of California. Failure to make ordered reimbursement within sixty (60) days of the billing shall constitute a violation of the probation order.

DATED: April 12, 2013



ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings